

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER GOULD,

Plaintiff,

- against -

QUEERTY, INC.

Defendant.

Docket No. 1:19-cv-3396

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Peter Gould (“Gould” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Queerty, Inc. (“Queerty” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of singer and actress Barbra Streisand, owned and registered by Gould, a New York based professional photographer. Accordingly, Gould seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Upon information and belief, this Court has personal jurisdiction over Defendant because Defendant resides and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Gould is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 7 East 17th Street, Apt 6B, New York, New York 10003.

6. Upon information and belief, Queerty is a domestic limited liability company organized and existing under the laws of the State of New York, with a place of business at 344 West 17th Street, New York, New York 10011. At all times material hereto, Queerty has owned and operated a website at the URL: www.queerty.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Gould photographed singer and actress Barbra Streisand (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Gould is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with United States Copyright Office and was given Copyright Registration Number VA 2-064-608.

B. Defendant’s Infringing Activities

10. Queerty ran an article on the Website entitled *Barbra Streisand: Celebrating 72 Years of Fierce Fabulousness*. See: <https://www.queerty.com/barbra-streisand-celebrating-72-years-of-fierce-fabulousness-20140424>. The article featured the Photograph. A screenshot of the Photograph on the Website is attached hereto as Exhibit B.

11. Queerty did not license the Photograph from Plaintiff for its article, nor did Queerty have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Queerty infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Queerty is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Queerty have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Queerty be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded punitive damages for copyright infringement;
5. That Plaintiff be awarded attorney's fees and costs;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
April 16, 2019

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz
Richard P. Liebowitz
11 Sunrise Plaza, Suite 305
Valley Stream, NY 11580
Tel: (516) 233-1660
RL@LiebowitzLawFirm.com

Attorneys for Plaintiff Peter Gould

